

REMARKS

In the office action of Sep. 14, 2005, the Examiner rejected Claims 13-24 under 35 USC § 112, second paragraph. The Examiner also rejected Claims 1, 4 and 5 under 35 USC § 102(b) as being anticipated by U.S. Patent 6,173,850 (issued Jan. 16, 2001; hereinafter "Scheetz, Jr."). The Examiner also rejected Claims 1 and 4-8 under 35 USC § 103(a) as being unpatentable over US Design Patent 259,021 (issued Apr. 28, 1981; hereinafter "Khovaylo"). The Examiner also rejected Claims 1-4, 9-10, 13-18, and 23-24 under 35 USC § 103(a) as being unpatentable over US Patent 5,908,127 (issued Jun. 1, 1999; hereinafter "Weick") in view of US Patent 5,158,190 (issued Oct. 27, 1992; hereinafter "Sosenko"). The Examiner also rejected Claims 5-8, and 19-22 under 35 USC § 103(a) as being unpatentable over Weick in view of Sosenko and further in view of US Patent 5,101,990 (issued Apr. 7, 1992; hereinafter "Krishnakumar"). The Examiner also rejected Claims 11 and 12 under 35 USC § 103(a) as being unpatentable over Weick in view of Sosenko and further in view of US Patent 5,435,451 (issued Jul. 25, 1995; hereinafter "Dyer").

The Applicants respectfully traverse the rejections and submit the following arguments.

Rejection of Claims 13-24 under 35 U.S.C. §112, second Paragraph

In Claim 13, applicants recite "a side wall attached to the bottom wall" wherein "the side wall includes at least three faces." Later in the claim the applicants state "wherein the bottom wall and side walls are formed...." Since only one side wall had been previously disclosed, the latter use of "side walls" resulted in a rejection.

Applicant has amended to Claim 13 to replace the term "side walls" with "the side wall." This change removes the term that lacked antecedent basis. The term "the side wall" has as its antecedent basis the recitation of "a side wall attached..." which occurs earlier in Claim 13. In light of this amendment, applicants respectfully request that the 35 U.S.C. §112, second paragraph rejection be withdrawn.

Rejection of Claims 1, 4 and 5 under 35 U.S.C. §102(b)

Applicants have amended independent Claim 1 to add a recessed portion to the bottom wall of the beverage container. The addition of this feature is well supported in the original specification. Specifically, page 3, lines 1 – 2, of the original application states, "The bottom

wall may have a recessed portion formed therein to receive one or more other fingers of the hand of the user when the user is pouring liquid out of the container." Page 7, lines 4 – 5, of the original application states, "and one or more fingers 52 of their right hand 48 are placed into the recess 40 of the bottom wall 22." Additional written references to a recess can be found on page 7, lines 23 and 40. Figs. 4 and 7 clearly depict a recess in the bottom of the beverage container. Finally, originally submitted and now cancelled Claim 2 disclosed the same language now incorporated into Claim 1.

With the addition of the recess to Claim 1, Scheetz, Jr. no longer discloses each and every feature of Claim 1. Accordingly, since Claims 4 and 5 are dependent on Claim 1, Scheetz Jr. no longer discloses each and every feature of Claims 4 and 5. In light of this amendment to Claim 1, applicants respectfully request that the 35 U.S.C. §102(b) rejection of Claims 1, 4 and 5 be withdrawn.

Rejection of Claims 1 and 4 -8 under 35 U.S.C. §103(a) over Khovaylo

As discussed in the immediately preceding section, applicants have amended independent Claim 1 to add a recessed portion to the bottom wall of the beverage container. With the addition of the recessed portion to Claim 1, Khovaylo is no longer a valid basis for a 35 U.S.C. §103(a) rejection since Khovaylo does not disclose a bottom recess.

Accordingly, since Claims 4 - 8 are dependent on Claim 1, Khovaylo no longer discloses each and every feature of Claims 4 - 8. In light of this amendment to Claim 1, applicants respectfully request that the 35 U.S.C. §103(a) rejection of Claims 1 and 4 - 8 over Khovaylo be withdrawn.

Rejection of Claims 1 and 13 under 35 U.S.C. §103(a) over Weick in view of Sosenko

To establish a *prima facie* case obviousness, the Examiner must show that all of the claim limitations of the Applicant s' claims are taught. Additionally, there must be some reasonable suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success in the combination.

Applicants assert that there exists no reasonable suggestion or motivation within Weick

or Sosenko to combine the references with each other. Applicants' invention is an ergonomic feature for a beverage container. The novelty of the applicants' invention lies in its configuration, which allows users to easily pour liquid out of the container.

Weick, on the other hand, does not describe any ergonomic features of the claimed container. Weick is concerned with the structural integrity of the container and discusses at great length how the features disclosed produce a container which can be hot filled and vertically stacked. The sole reference to handling is contained in the background section of the disclosure and states "In addition, it is typically desirable to have a container which is able to be easily handled by a consumer...." Weick column 1, lines 55-56. This vague reference to being easily handled does not suggest that Weick is incomplete in any way or that it could possibly be improved ergonomically. Indeed, since there is an implication that the Weick design can be easily handled there is no suggestion whatsoever that the design can be ergonomically improved.

There is also no suggestion in Weick that the recess on the bottom of the container is an ergonomic feature. In fact, Weick describes the bottom recess as a feature which "enhances the overall structural integrity of the container." Weick column 6, lines 32-33.

Similarly, Sosenko provides no suggestion or motivation that it requires any ergonomic improvement. As opposed to Weick, Sosenko's novelty rests in its ergonomic features. Sosenko is designed to be held "with a hand around base section 9 such that the index finger or the middle finger or both rests in slots 8. The thumb then extends about or toward the other side of bottle 8 and abuts a portion of the downside curve of mid-section 4." Sosenko column 3, lines 6-10. Thus, Sosenko claims ergonomic features and makes no suggestion that additional ergonomic features need to be added to the container. Sosenko is a complete self-contained reference for an ergonomic beverage container. It should also be noted that Sosenko discloses a relatively small beverage container in that, as noted above in the quoted section, is designed to be gripped with one hand.

Given that Weick is a patent dealing purely with structural integrity of a beverage container and Sosenko is a patent dealing purely with ergonomic features of a beverage container, there is no motivation to combine the two when developing an ergonomic improvement. In other words, one attempting to improve the ergonomic features of a device does not look to structural features for better ergonomics.

It is also important to note that when developing ergonomic advantages, the

rearrangement of known features in itself can be patentable when the new arrangement produces ergonomic advantage. For example, US patent 5,336,001 (issued Aug. 9, 1994; hereinafter "Lichtenberg," attached as Exhibit A) is a patent for a keyboard for use with a computer. Claim 1, column 9, lines 40-61, does not claim any novel structural feature or device. Claim 1 claims a novel rearrangement and configuration of keys on a keyboard. This is analogous to the present invention. From Sosenko and Weick, it is clear that recessed areas in the side of a container or in the bottom of a container are known. However, one reason why the present invention is novel is the configuration and orientation of the recesses on the side and bottom of the beverage container, which results in significant ergonomic improvement over the prior art.

The amendment of Claim 1 discussed in the above sections does not detract from this analysis. To the contrary, the addition of the recessed portion to Claim 1 where some fingers are placed in the recess and other fingers are placed in the groove, serves to strengthen the argument that the design possesses a novel ergonomic arrangement and represents a significant advancement over the prior art.

In summary, applicants contend that the combination of a structural reference (Weick) with an ergonomic reference (Sosenko) is inappropriate in that no motivation is present. Furthermore, applicants assert that the rearrangement of individual design features that may be known in the art can produce patentable subject matter if that rearrangement is novel and produces significant ergonomic advantages over the prior art. Here, applicants contend that the claimed invention produces such ergonomic advantages and is novel and nonobvious over the prior art.

Accordingly, applicants respectfully request that the 35 U.S.C. §103(a) rejection of Claims 1 and 13 over Weick in view of Sosenko be withdrawn and the claims allowed. Additionally, since Claims 2-12 and 14-24 are dependent on Claims 1 and 13 respectively, applicants respectfully request that the 35 U.S.C. §103(a) rejection of those claims also be withdrawn and the claims allowed.

Rejection of Claims 5-8 and 19-22 under 35 U.S.C. §103(a) over Weick in view of Sosenko in further view of Krishnakumar

Additionally, applicants respectfully request that the 35 U.S.C. §103(a) rejection of

Claims 5-8 and 19-22 be reconsidered and withdrawn and the claims allowed for the same reasoning discussed above. That is, Krishnakumar is a patent dealing purely with the structural integrity of a container and contains no references to the ergonomic value of the disclosed design. Therefore, there is no motivation contained within Krishnakumar to combine aspects of Krishnakumar with either Weick or Sosenko to produce a new ergonomic container.

Rejection of Claims 11 and 12 under 35 U.S.C. §103(a) over Weick in view of Sosenko in further in view of Dyer

The examiner rejected claims 11 and 12 as being unpatentable over Weick in view of Sosenko and further in view of Dyer. Applicant does note that, as opposed to Weick or Sosenko, Dyer does disclose ergonomic features of a container. The ergonomic features disclosed by Dyer are generally plainer parallel gripping surfaces formed on two sides of the container. Dyer column 5, lines 10-11. However, Dyer lacks any suggestion or motivation for it to be combined with Weick and/or Sosenko. Applicants also note that neither Dyer nor Sosenko disclose a feature on the bottom wall of a bottle used to aid in the handling of the bottle. Both Dyer and Sosenko use features located on the sides of the bottles to assist in handling. Significantly, no reference cited contains an ergonomic feature designed to assist in the handling of a container located on a bottom wall. The placement by applicants of an ergonomic feature on the bottom wall of a beverage container is in itself a novel and non-obvious improvement over the prior art. Accordingly, applicants respectfully request that the 35 U.S.C. §103(a) rejection of Claims 11 and 12 be reconsidered and the claims allowed.

Amendment to Claim 1

Formerly, Claim 2 contained a reference to a recessed portion formed in the bottom wall. This feature has been incorporated into Claim 1. This change resulted in the introduction of a user, a user hand, and user fingers prior to the same items being discussed with respect to a side wall. Therefore Claim 1 had to be further amended by changing subsequent references to show their antecedent basis. For example, “a hand” has been amended to “the hand” in the clause discussing a side wall. Claim 1 has also been amended to clarify any possible confusion over the term “side walls” that was used in the original claim. Although the phrase “the bottom wall and

side walls” was not meant to refer to multiple side walls, it has been changed to avoid any possible misinterpretation. The claim now reads “the bottom wall and the side wall” which unambiguously refers to the single side wall disclosed previously in the claim.

Cancellation of Claim 2

Claim 2 has been canceled.

Amendment to Claim 3

Claim 3 formerly depended on Claim 2. As a result of the cancellation of Claim 2, Claim 3 has been modified to now depend on Claim 1.

Amendment to Claim 11

Claim 11 has been amended to reflect that the container, as claimed in Claim 1, has a recessed portion on the bottom wall. The added reference to the recessed portion is fully supported in the specification as noted above in the section discussing the §102(b) rejection.

Amendment to Claim 13

Claim 13 has been amended in response to the §112, second paragraph rejection discussed above. The phrase “with a first hand” has also been added to the claim. Although the phrase does not alter Claim 13, it has been added so that a first hand can be distinguished from a second hand which is disclosed in new Claim 26 which is dependent on Claim 13.

New Claim 25

Claim 25 is dependent on Claim 1 and adds a limitation to Claim 1 that Claim 1 applies to a beverage container that is too large to allow an average-sized hand to grip opposite sides of the side wall simultaneously. This claim is supported in the specification in several ways. First, gallon sized containers are inherently too large for a user to grasp both sides simultaneously with one hand. The background section of the original application discusses gallon sized containers. Page 1, line 7. Page 7, lines 13-14, states that the beverage container is configured “to fit an

optimal number of hands of adult and older children.” Inherently, to fit an optimal number of hands the beverage container must be configured to accommodate average-sized hands.

However, more importantly, no limitation was put on the size of the beverage container in the specification. Therefore, adding claim language that simply limits the claim to containers larger than a certain size does not introduce new material.

New Claim 26

Claim 26 is dependent on claim 13 and adds a limitation that the beverage container is configured to be grasp with two hands when pouring liquid. This is supported in the specification in several places. For example, page 7, lines 10-12, and Fig. 9 discuss handling the beverage container with two hands.

New Claim 27

Claim 27 is dependent on claim 16 and adds a limitation that the beverage container also comprises a bail handle. This is supported in the specification on page 7, lines 10-12, and in Fig. 9.

New Claims 28-31

These added claims reflect features of the beverage container disclosed in the original application in Figs. 1 through 6.

New Claim 32

Claim 32 is a new independent claim that recites several aspects of a beverage container that are revealed throughout the specification. More specifically, Claim 32 claims features that were disclosed in the original application in Figs. 1 through 6. Claim 32 introduces no new material.

Conclusion

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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